IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9247 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
MADHUBINDU JAYSHANKER VYAS & 1 - Respondent(s)

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Appearance :
MR DIPEN DESAI, ASST. OVERNMENT PLEADER for Petitioner(s) : 1,
MR J.R.NANAVATI FOR SUNIL B PARIKH for Respondent(s) : 1,
MR AJ PATEL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/10/2006

ORAL JUDGMENT

1.Present petition has been filed by the State of Gujarat under Article 227 of the Constitution of India challenging the judgment and order passed by the Urban Land Tribunal dated 22nd January, 1999 passed in Review Application No. Jamnagar/31/98 in allowing the said review application by modifying its earlier order and declaring that no land of the original declarant – respondent No.1 herein is required to be declared as excess vacant land on the basis of the order passed by the Competent Authority & Deputy Collector, Urban Land Ceiling, Jamnagar, and further passing the order to close the form. By way of amendment, it is also further prayed for an appropriate order to declare that the sale transaction in favour of M/s. Sagar Raj Land Developers – respondent No.2 (joined as per the order dated 19th October, 2005 passed in Civil Application No. 9808 of 2005) by way of registered sale deed dated 14th May, 1999 as illegal and void and therefore, to be set aside.

2.At the outset, it is to be observed that this is a

unique case of fraud by the original land owner in connivance with the Urban Land Tribunal and/or office of Urban Land Ceiling Department and at the outset, it is also required to be noted that by way of impugned judgment and order dated 22nd January, 1999, the tribunal while exercising the powers of review, has set aside its earlier order, which was, in fact, confirmed by this Court upto the Division Bench by way of Letters Patent Appeal and in fact, decided the review application within a period of two and half months only, which was filed after almost 11 years, more particularly, when the Urban Land Ceiling Act was to be repealed. The review application was presented by the respondent No.1 – original declarant before the Urban Land Tribunal on 14th November, 1998 and the same came to be allowed vide order dated 22nd January, 1999 and that the Urban land Ceiling Act came to be repealed w.e.f. 31st March, 1999.

3. Few facts are necessary for the purpose of determination of the present Special Civil Application and to appreciate the fact that how and

in what manner, the original declarant/land owner has played mischief and fraud.

The land bearing City Survey No. 37/G/5 paiki Municipal Census No.368 paiki admeasuring 2805.58 sq mts of land situated at Jamnagar was owned by the respondent No.1 herein i.e. Smt. Madhubindu Jayshanker Vyas. On coming into force the Gujarat Urban Land Ceiling Act (hereinafter referred to as the “ULC Act”), she submitted the declaration/form under Section 6(1) of the ULC Act. The said form was processed by the Competent Authority & Deputy Collector, Urban Land Ceiling, Jamnagar, (hereinafter referred to as “the Competent Authority”) and by order dated 12th October, 1984 declared 746.14 sq mts of land as excess vacant land under the provisions of the ULC Act from the holding of the original declarant. Being aggrieved and dissatisfied with the order passed by the Competent Authority dated 12th October, 1984 declaring 746.14 sq mts of land as excess vacant land, the original land owner – declarant preferred appeal under Section 33 of the ULC Act before the

Urban Land Tribunal being Appeal No. 1647/1984, which came to be dismissed on merits by the tribunal by order dated 14th May, 1987 and the order passed by the Competent Authority dated 12th October, 1984 declaring 746.14 sq mts of land as excess vacant land from her holding came to be confirmed. Being aggrieved and dissatisfied with the order passed by the Urban Land Tribunal dated 14th May, 1987 passed in Appeal No. 1647/1984 in dismissing the same and confirming the order passed by the Competent Authority dated 12th October, 1984 in declaring 746.14 sq mts of land as excess vacant land, the respondent No.1 herein – original land owner – declarant preferred Special Civil Application before this Court being Special Civil Application No.5238/87 and the learned Single Judge of this Court dismissed the said Special Civil Application confirming the order passed by the Urban Land Tribunal as well as of the Competent Authority declaring 746.14 sq mts of land as excess vacant land. Being aggrieved and dissatisfied with the order passed by the learned Single Judge of this Court dated 19th November, 1987 in dismissing

the aforesaid Special Civil Application, the respondent No.1 herein – original land owner – declarant preferred Letters Patent Appeal being Letters Patent Appeal No.511/88 before the Division Bench of this Court and the Division Bench of this Court vide its order dated 7th January, 1991 dismissed the said Letters Patent Appeal. Thus, the order passed by the Competent Authority dated 12th October, 1984 and the judgment and order passed by the Urban Land Tribunal passed under Section 33 of the ULC Act as well as the order passed by the learned Single Judge of this Court dated 19th November, 1987 passed in Special Civil Application No. 5238/87 became final. It appears from the record that thereafter the original land owner approached the State Government under Section 34 of the ULC Act against the order passed by the Competent Authority dated 12th October, 1984 in the year 1993, though the same was not maintainable as the appeal under Section 33 of the ULC Act was already rejected and that too the said order came to be confirmed upto the Letters Patent Appeal and therefore, it was not open for the original land

owner to submit an application under Section 34 of the ULC Act against the original order passed by the Competent Authority. It appears that the State Government pressed for particulars with regard to the latest position and after getting necessary particulars, the said review application was not accepted. In the meantime, further proceedings, pursuant to the order passed by the Competent Authority dated 12th October, 1984 came to be initiated and the notification under Section 10(1) of the ULC Act was issued on 30th October, 1984 and the same was also published in the Official Gazette. That thereafter notification under Section 10(3) of the ULC Act was issued on 17th September, 1987 and the same was also published in the Official Gazette on 1st October, 1987. In the meantime and before the issuance of the notification under Section 10(5) of the ULC Act, the original land owner approached the Urban Land Tribunal by way of aforesaid Appeal No. 1647/84, which came to be dismissed on 14th May, 1987 and against which, the original land owner – respondent No.1 herein preferred Special Civil Application

No.5238/87 and the same also came to be dismissed on 19th November, 1987 as stated hereinabove. That thereafter the Competent Authority issued notice on 15th October, 1987 under Section 10(5) of the ULC Act calling upon the petitioner to surrender the possession of the land, which came to be declared as excess vacant land and the said notice was served upon the original land owner – respondent No.1 herein on 14th November, 1987. That in the meantime, the petitioner preferred application under Section 21 of the ULC Act, which came to be dismissed and against which Appeal No. 11/88 was preferred before the Urban Land Tribunal, which also came to be dismissed. That thereafter, on rejection of the Appeal No. 11/88, which was against the rejection of the application under Section 21 of the Act, it is the case on behalf of the State Government that the authority took the possession of the excess vacant land on 28th September, 1988 and the panchnama to that effect was also prepared on the same date. Inspite of the aforesaid facts and circumstances and the original order passed by the Competent Authority & Deputy

Collector, Urban Land Ceiling, Jamnagar, declaring 746.14 sq mts of land as excess vacant land came to be confirmed by the Urban Land Tribunal and even by this Court vide order dated 19th November, 1987 passed in Special Civil Application against which the Letters Patent Appeal was filed and which also came to be dismissed and it appears that as the date of coming into force of the Urban Land Ceiling (Repeal) Act i.e. 31st March, 1999 was coming nearer, without disclosing the facts that against the order passed by the Urban Land Tribunal dated 14th May, 1987 in Appeal No. 1647/84, the original land owner preferred the Special Civil Application No.5238/87 and the said Special Civil Application was rejected whereby the order passed in appeal by the Urban Land Tribunal came to be confirmed and even the Letters Patent Appeal was also dismissed, the original land owner submitted Review Application No.31/98 before the Urban Land Tribunal on 14th November, 1998 to review the order dated 14th May, 1987 passed in Appeal No. 1647/84, though the said order was confirmed by the learned Single Judge of this Court vide order dated 19th November,

1987 in Special Civil Application No. 5238/87 and even further by the Division Bench of this Court vide Letters Patent Appeal; even when there were no powers of review vested in the Urban Land Tribunal except under Section 45 of the Act, where a review application was maintainable only in case of a clerical or arithmetical error committed in calculation and inspite of the aforesaid facts, the aforesaid review application was filed after the period of 11 years of passing of the order by the Urban Land Tribunal, which was sought to be reviewed, the Urban Land Tribunal though the review application was not maintainable, went a step further whereby the tribunal not only entertained the said review application but also set aside the order passed by the Competent Authority dated 12th October, 1984 by which 746.14 sq mts of land was declared as excess vacant land, by its order dated 22nd January, 1999 declaring that the original land owner was not holding any excess vacant land. Being aggrieved and dissatisfied with the impugned order passed by the Urban Land Tribunal dated 22nd January, 1999, the State Government preferred the

present Special Civil Application being Special Civil Application No.9247 of 1999 in the month of July – 1999 and this Special Civil Application came to be admitted by the learned Single Judge of this Court on 25th November, 1999 and granted the stay of the impugned order passed by the Urban Land Tribunal passed in Review Application No. 31/98 dated 22nd January, 1999. The Urban Land Ceiling Act came to be repealed on 31st March, 1999, the respondent No.1 herein – original land owner sold 746.14 sq mts of land to the respondent No.2. The present Special Civil Application came up for final hearing before this Court in the month of September/October – 2005. In the meantime, it was brought to the notice of the State Government that the land has been sold to the respondent No.2 herein and therefore, the State Government preferred Civil Application being Civil Application No.9808 of 2005 for amending the main petition and joining the respondent No.2, purchaser of the land, as party respondent No.2 in the present proceedings. The Rule was issued by this Court in the said Civil Application and the original land

owner contested the Civil Application by way of filing affidavit-in-reply. The respondent No.2 herein also opposed the said Civil Application by filing affidavit-in-reply. After considering the affidavit-in-reply and after hearing the respondents, this Court allowed Civil Application No.9808/2005 by order dated 19th October, 2005 and granted the amendment and permitted the State Government to join the respondent No.2 as party respondent No.2 to the present proceedings and the main Special Civil Application was fixed for final hearing on 25th October, 2005. Being aggrieved and dissatisfied with the order passed by this Court dated 19th October, 2005 passed in Civil Application No.9808/2005, the original land owner – respondent No.1 herein as well as the purchaser – respondent No.2 herein preferred two Letters Patent Appeals and both the Letters Patent Appeals came to be dismissed by the Division Bench of this Court (Coram: Hon'ble Mr. Justice G.S.Singvi & Hon'ble Mr. Justice P.B.Majmudar, JJ.) on 28th October, 2005 and thereafter, the present Special Civil Application came to be adjourned time and again and

was finally heard by this Court.

4.Shri Dipen Desai, learned AGP, while assailing the order passed by the Urban Land Tribunal dated 22nd January, 1999 passed in Review Application No. 31/98 has vehemently submitted that the tribunal has committed an error in entertaining the said review application. It is submitted by him that the impugned order of the tribunal is absolutely illegal, arbitrary and contrary to the settled principles of law inasmuch as the tribunal entertained the review application without there being any jurisdiction conferred upon the tribunal to entertain the review application. It is submitted by him that the powers of review are not inherent powers and it is to be vested specifically by the Statute. It is submitted by him that in the present case, the ULC Act did not provide for any powers of review upon the tribunal and therefore, without there being any specific powers of review, the tribunal should not have entertained the review application. In support of his above submission, he has relied upon the decisions of the Hon'ble

Supreme Court in case of ***Patel Narshi Thakershi V/s. Pradyumansinghji Arjunsinhji*** reported in **AIR 1970 SC P.1273** and in case of ***Lily Thomas, etc. etc., V/s. Union of India and others*** reported in **AIR 2000 SC P.1650**.

5.It is further submitted by him that in the alternative and without prejudice to his above submission, even if the review application can be entertained, then also the scope of the tribunal would be limited as provided under Order 47, Rule 1 of the C.P.C. It is submitted by him that Order 47, Rule 1 of C.P.C. clearly provides that where no appeal is allowed and/or preferred, the review application is not permissible. It is submitted by him that in the present case, the respondent No.1 challenged the order of the tribunal, which subsequently came to be reviewed by the tribunal and by way of Special Civil Application No. 5238/87 which was rejected and against which, Letters Patent Appeal No.511/88 was preferred which was also rejected. It is submitted by him that when the Higher Forum is approached and the Higher Forum

confirms the order of the subordinate Court or the authority, the tribunal ceases to have jurisdiction to entertain the review application. It is also further submitted by him that even the doctrine of merger would be applicable in the present case inasmuch as the judgment of the tribunal dated 14th May, 1987 would merge in the order dated 19th November, 1997 passed by the learned Single Judge of this Court passed in Special Civil Application No.5238/87 and therefore, once the order of tribunal having merged with the order of this Court, the tribunal would not have jurisdiction to review its own order and therefore, the impugned order passed by the tribunal is beyond the jurisdiction vested in the tribunal. In support of his above submission, he has relied upon the following judgments:-

(I) ***M/s. Kabari Pvt. Ltd., V/s. Shivnath Shroff and Others*** reported in **AIR (1996) SC P.742** (Para 22).

(II) ***State of Maharastra And Another V/s.***

Prabhakar Bhikaji Ingle reported in **(1996) 3 SCC P.463** (Paras 4 & 5).

(III) ***Sree Narayana Dharmasanghom Trust V/s. Swami Prakasananda And Others*** reported in **(1997) 6 SCC P.78** (Paras 3 to 6).

(IV) ***Gopabandhu Biswal V/s. Krishna Chandra Mohanty And Others*** reported in **(1998) 4 SCC P.447** (Para 8).

6.It is also further submitted by him in furtherance of his alternative submission that the review is not rehearing on merits nor is an appeal in disguise. It is submitted by him that the tribunal could not have gone into the merits of the case again and the very fact that for adjudication of review application if the tribunal or the Court is required to enter into the merits, proves that the same is rehearing of the case or appeal in disguise and therefore, the tribunal ought to have restrained itself from entertaining the review application as soon as the adjudication requires

entertaining into merits. In support of his above submission, he has relied upon the following judgments of the Hon'ble Supreme Court.

(I) ***Sow Chandra Kante And Another V/s. Sheikh Habib*** reported in **1975 (1) SCC P.674**.

(II) ***Meera Bhanja (Smt) V/s. Nirmala Kumari Choudhury (Smt)*** reported in (**1995) 1 SCC P.170** (Paras 8,9,10 & 15).

(III) ***M/s. Northern India Caterers (India) V/s. Lt. Governor of Delhi*** reported in **1980 (2) SCC P.167** (Para 8).

7. He has also further submitted that the review application even if maintainable, can only be preferred for correction of error apparent on the face of the record. It is submitted by him that in the present case, there was no error, much less any error apparent on the face of the record and therefore, the tribunal ought not to have entertained the review application. It is further

submitted by him that in the present case, the main contention of the respondent before the tribunal is that because of the subsequent judgment in case of ***Smt. Meera Gupta V/s. State of West Bengal and Others*** reported in **AIR 1992 SC P.1567** by the Hon'ble Supreme Court, the tribunal was justified in entertaining the review application and in passing the impugned order. It is submitted by him that the review on the ground of change of law or subsequent judgment is not maintainable and explanation to Order 47 Rule 1 is clear that due to change of law or subsequent judgment, the review cannot be preferred. It is submitted by him that even otherwise, the decision of the Hon'ble Supreme Court in Meera Gupta's case was delivered in the year 1992 whereas, the review application was preferred in the month of November – 1998 and therefore, actually the same was not at all the ground for review.

8. It is further submitted by him that the tribunal has materially erred in entertaining the review application after delay of more than 11 years

without there being any justification for condonation of delay and/or even condoning the delay.

9.It is further submitted by him that even on merits the tribunal's order is absolutely illegal and contrary to the evidence on record. It is submitted by him that the tribunal in the impugned order has gone into the merits regarding construction on the land in question and as such the said aspect was already decided by the Competent Authority vide its order under Section 8(4) dated 12th October, 1984 wherein, the said aspect was discussed in detail regarding the construction carried out by the respondent No.1 herein. It is also further submitted by him that the tribunal in the earlier order dated 14th May, 1987 also discussed the said aspect regarding the construction and not only that even the learned Single Judge of this Court also in Special Civil Application No. 5238/87 discussed the said aspect and therefore, both the authorities below as well as this Court, after dealing with the aspect of construction on the land in question

rejected the said contention raised by the respondent No.1 original land owner and therefore, the tribunal ought not to have come to any conclusion contrary to the decision of this Court rendered in Special Civil Application No.5238/87. It is submitted by him that therefore once the earlier order of the tribunal had become final, the same was binding to the respondent No.1 and the tribunal had no jurisdiction to entertain the review application. It is further submitted by him that irrespective of the doctrine of merger becoming applicable, the tribunal has committed an absolute error in entertaining the review application. It is submitted by him that the impugned order passed by the tribunal is contrary to the order passed by this Court between the same parties and therefore, the same is illegal and requires to be quashed and set aside.

10.It is also further submitted by him that even the tribunal has been misled by the respondent No.1 herein in connivance with the Officers of the Competent Authority inasmuch as the material facts

were not placed before the tribunal. It is submitted by him that the fact that the earlier order dated 14th May, 1987 passed by the tribunal was challenged before this Court and this Court had dismissed the petition against which the Letters Patent Appeals was preferred which also came to be dismissed, were not disclosed to the tribunal and therefore, the impugned order has been obtained from the tribunal by committing fraud and by misrepresentation. It is submitted by him that therefore the order which is obtained by fraud and/or misrepresentation is nullity and has no legal status in the eyes of law. It is submitted by him that it was the bounden duty of the respondent No.1 to bring to the knowledge of the Tribunal the facts regarding the dismissal of the Special Civil Application and the Letters Patent Appeals and by not bringing the said facts to the notice of the tribunal, the respondent No.1 has committed fraud. It is submitted by him that nobody can be permitted to take disadvantage of the order which is obtained by him by fraud, otherwise it will perpetuate the illegality and therefore, it is requested to quash

and set aside the impugned order passed by the tribunal.

11.Present Special Civil Application is opposed by the respondent No.1 on the following grounds and by making following submissions:-

(I) That the State Government has no right to file the present Special Civil Application against the order passed by the Urban Land Tribunal.

(II) The Urban Land Tribunal had power to review its own judgment and the impugned judgment is in accordance with the law.

(III) The tribunal is bound to give effect to the judgment of the Hon'ble Supreme Court in case of Meera Gupta (Supra), which is again confirmed in 2002 (7) SCC P.336.

(IV) The Urban Land Tribunal and the State Government are bound by the declaration of law declared by the Hon'ble Supreme Court.

(V) The possession of the land alleged to have been taken on 29th September, 1988 is under bogus panchnama and in fact, actual possession was not taken by the authority.

(VI) That the property and the land in question was in possession of the respondent No.1 after passing of the order in review and the respondent No.1 handed over the possession to the respondent No.2 on 14th May, 1999 after obtaining permission under Section 26 of the ULC Act.

(VII) That after passing of the order in review, the land in dispute was sold on 14th May, 1999 to the respondent No.2 by registered sale-deed, which clearly shows that on 31st May, 1999 the possession of the land was with the respondent No.1 and the purchaser had made construction on the land spending crores of rupees and he sold the same to a large number of persons and third party rights are created.

(VIII) That there is no merger as alleged.

(IX) The present petition is barred by delay and laches and third party rights have been created and that the purchaser was not joined after lapse of 6 years and the allegation of mala-fide made by the Chitnis and Collector, after 6 years, cannot be looked into.

12.Shri JR Nanavati, learned advocate appearing on behalf of the original land owner has submitted that the State Government has no right to file the present Special Civil Application against the order passed by the Tribunal, Ex Officio Secretary. It is submitted by him that Secretary, Revenue Department is a part of the Government and the order passed by the Secretary of the Government is an order of the State Government and the State Government cannot make any grievance against their own order. It is submitted that Section 33 does not constitute the Tribunal but merely the appellate authority and Section 12 constitutes the Tribunal. Relying upon the Division Bench judgment of this Court in the

case of ***Geetaben Janakbhai Patel V. Competent Authority & Dy. Collector of Ahmedabad and another*** reported in **1996(1) GLR 689**, he has submitted that the Tribunal has jurisdiction to decide review application. He has also further submitted that subsequently if, any change in law is made, then it will be a valid ground for review. In support of his above submission, he has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Board of Control for Cricket, India and another V. Netaji Cricket Club and others*** reported in **2005 AIR SC Weekly 230**. He has also relied upon the judgment of this Court in the case of ***Jayantilal Bachubhai Vadiwala V/s. Competent Authority, ULC, Surat & Another*** reported in **1995(1) GLR 831**.

13.Relying upon sections 12(5), 31, 32 and 33 of the ULC Act, it is submitted that all powers of civil Court are vested in the Tribunal.

14.He has also further submitted that the Tribunal was bound to give effect to the judgment of the Hon'ble Supreme Court in the case of Meera Gupta

(supra). He has also further submitted that the said judgment has been again confirmed in the decision of ***State of Maharashtra And Another V/s. B.E.Billimoria And others*** reported in **2003(7) SCC 336**. Shri Nanavati has submitted that the Tribunal and the State Government are bound by the declaration of law declared by the Hon'ble Supreme Court. He has submitted that the Hon'ble Supreme Court declared the law in Meera Gupta (supra) and it was the bounden duty of the State Government to do justice to its own citizen. He has submitted that the Hon'ble Supreme Court in Meera Gupta (supra) has declared the law as on the date on which the Act came into force on 17-2-1976. He has submitted that in order to give justice to its own citizen, the State is bound to comply with the declaration made by the Hon'ble Supreme Court and give the benefit, which they are entitled to by virtue of the Supreme Court judgment. Shri Nanavati has relied upon the following decisions of the Hon'ble Supreme Court which lay down the proposition of law that a declaration of law made by the Hon'ble Supreme Court, is binding on all

authorities.

1. 2002(4) SCC 638
2. 2000(3) SCC 495
3. 2003(4) SCC 147

15.It is submitted by him that when the Tribunal has given effect to the declaration of law made by the Hon'ble Supreme Court in the case of Meera Gupta (supra), then this Court under Article 226 of the Constitution of India should not interfere with the order of the Tribunal which is in accordance with law, declared by the Hon'ble Supreme Court.

16.It is further submitted by him that the possession of the land alleged to have been taken on 29-9-1988 was under a bogus panchnama and in fact physical/actual possession was not taken by the authority. He has also further submitted that the panchnama does not show that measurement was in fact taken. He has submitted that the panchnama has been made in the office and not on the site and the respondent No.1, original land owner continued with possession and was never divested of possession by

the competent authority. He has further submitted that possession of the property was not taken by the alleged panchnama dated 29-9-1988 and in any case, respondent No.1 was in possession of the land after passing of the order in review and handed over the possession to the respondent No.2 on 14-5-1999 after obtaining permission under Section 26 of the ULC Act. He has also further submitted that the State Government has filed the present Special Civil Application after repeal of the amended Urban Land (Ceiling and Regulation) Act, which is not maintainable. By relying upon the affidavit filed by one Shri Malde Naranbhai Varotaria, power of attorney holder of Smt. Madhubindu Vyas dated 13th June, 2006, wherein it is stated that the Assistant Commissioner, Land Reforms, Gandhinagar by his order dated 5-6-2006 informed Smt. Madhubinduben that having regard to the repeal of the ULC Act, the records for review had been returned to the concerned office on 21-5-1999, it is submitted that it shows that the State Government has stated that the proceedings have been abated on account of the repeal of the ULC Act and the Land Reform

Commissioner did not review the matter because review proceedings abated after the repeal of the ULC Act and therefore, the present Special Civil Application is not maintainable.

17.It is also further submitted by him that at the relevant time when the alleged possession was taken, the application submitted by the original land owner under Section 21 was pending and therefore, it was not competent for the competent authority to take possession of the land as alleged, by them. He has relied upon the judgment of the Division Bench of this Court in the case of ***Savitaben Ramanbhai Patel V. State of Gujarat and others*** reported in **1999(1) GLR 860** in support of his above submission. Shri Nanavati has further submitted that after passing of the order in review, the land in dispute was sold on 14-5-1999 by registered sale deed to the respondent No.2, which clearly shows that on 31-3-1999, the possession of the land was with respondent No.1 and the purchaser has made constructions on the land spending crores of rupees and sold the same to

large number of persons. It is submitted by him that the State Government has never objected to the same. He has also further submitted that even the sale in favour of respondent No.2 has been made after taking permission under Section 26 of the Act and the permission was granted by the competent authority on 15-3-1999. While dealing with the submission on behalf of the State Government with regard to merger, Shri Nanavati has submitted that as such the learned Single Judge of this Court in Special Civil Application No.5238 of 1987 refused to interfere under Article 227 of the Constitution of India and in the LPA No.511 of 1988, the learned Division Bench also refused to interfere on the ground that the learned Single Judge has not interfered with the order passed by the Tribunal under Article 227 of the Constitution of India and therefore, there is no question of merger as submitted. He has referred the judgment of the Hon'ble Supreme Court in the case of ***Kunhyammed and others V/s. State of Kerala and another*** reported in **AIR 2000 SC 2587** and in the case of ***Sree Narayana Dharmasanghom Trust V/s. Swami Prakasananda And***

Others reported in **(1997) 6 SCC 78** in support of his above submission. Meeting with the submission on behalf of the State Government with regard to suppression of fact of the order passed by the learned Single Judge in Special Civil Application No.5238 of 1987 dated 19–11-1987 and the order passed by the learned Division Bench of this Court in LPA No.511 of 1988 dated 7-1-1991, Shri Nanavati has submitted that both the orders were part of the competent authority's record and same are referred to in the order passed under Section 21 of the ULC Act passed by the Tribunal being Appeal No.11 of 1988 and therefore, the order under review, is made after consideration of all the facts and therefore, there is no suppression of facts as alleged. So far as the allegation with regard to the fraud, in the affidavit filed by chitnis of Collector on 17-10-2005, it is submitted by him that chitnis has no authority to file affidavit and contending that the respondent No.1 has fraudulently obtained order from the appellate authority. He has submitted that chitnis is not a competent officer to file affidavit on behalf of the State Government and the

State Government in the petition, has not made any allegation of fraud and no office of the State Government has come before the Court and had made allegation of fraud. It is submitted by him that the chitnis had no authority to file affidavit regarding record of the case and that various statements made by him regarding record and its genuineness are not authorized and should not be looked into. It is submitted by Shri Nanavati that the record was not with him and he is not the person, who is holding the record in his official capacity. It is further submitted by Shri Nanavati that on the contrary, the averments in the affidavit shows that the Government record is not traceable and the negligence and inefficiency of the office cannot result in fraud as alleged. He has relied upon the decision of the ***A.C.Ananthaswamy and others V/s. Boraiah (Dead) By LRS.*** reported in **2004(8) SCC 588** and ***Bank of India And Antother V/s. Avinash D. Mandivikar And another*** reported in **2005(7) SCC 690**. At the last, Shri Nanavati has submitted that in view of the third party interest is created and the petition is

barred by gross delay and laches and the suppression of material facts, more particularly, permission granted under Section 26 of the ULC Act, he has requested to dismiss the present Special Civil Application.

18.Shri AJ Patel, learned advocate appeared on behalf of the appearing on behalf of respondent No.2, newly added party. At the outset, it is required to be noted that on 28-10-2005, Shri AJ Patel, learned advocate appearing on behalf of respondent No.2 made a statement and submitted that in fact the construction, which is put up by respondent No.2 after purchasing the land in question was on a retainable land. Thereafter, the matter was heard in part and is adjourned time and again at the instance of the learned advocate appearing on behalf of the parties and when it was heard on the last occasion and when the written submissions came to be filed on behalf of newly added respondent No.2, surprisingly and only with a view to help the respondent No.1 original land owner, the respondent No.2 has made submissions which is contrary to what

is stated by Shri AJ Patel, learned advocate appearing on behalf of the respondent No.2 on 28-10-2005, which is not permissible. A specific statement was made by Shri Patel that the construction, which is put up by them after purchasing the land in question is on a retainable land. Therefore, so far as respondent No.2 is concerned, respondent No.2 is not likely affected by any order passed in this Special Civil Application as the present Special Civil Application is with regard to land which was declared as excess vacant land i.e. 746 sq mtr land and not with regard to retainable land. Therefore, the submissions made on behalf of respondent No.2 are not required to be dealt with and/or considered in light of the statement made on 28-10-2005 and which are just contrary to the stand taken by respondent No.2 on 28-10-2005.

19.In reply to the submissions made on behalf of respondent No.1, Shri Dipan Desai, learned AGP while dealing with the objections raised by Shri Nanavati that the State Government has no right to

file the Special Civil Application against the order of the Tribunal, has submitted that an order passed by the Tribunal cannot termed as an order passed by the State Government or its subordinate authority. It is submitted by him that if the contention on behalf of respondent No.1 is accepted, then in no case, the State Government can challenge the order of the Tribunal, even though the order is absolutely arbitrary, perverse and illegal. He has submitted that it would mean that the State Government would be left high and dry without any remedy available to it and such cannot be the intention of the legislature to leave any party without any remedy.

20.Meeting with the contention on behalf of respondent No.1 that the Tribunal had jurisdiction of review, he has submitted that as stated above, there is no specific provisions with regard to the review and the only section which has some resemblance to the power of correcting mistake is section 45 but the said section also authorizes the officer or authority to only correct clerical or

arithmetical error committed in calculation. It is submitted by him that the present case does not deal with correction of clerical or arithmetical error and section 45 only authorizes any officer or authority to correct clerical or arithmetical mistake committed by it, but a Tribunal would not be included within the meaning of officer or authority and therefore, even the powers of section 45 cannot be exercised by the Tribunal. He has relied upon the judgment of this Court in the case of ***Himatlal J. Vakharia V/s. Urban Land Tribunal And Another*** reported in **1988(1) GLR 205**. He has also relied upon the judgment of this Court in the case of ***Amratlal Muljibhai Thakkar And Another V/s. Ambalal Ranchhodlal Thakkar*** reported in **1972 GLR 756**, wherein this Court has upheld that once the Hon'ble Supreme Court dismissed the petition under Article 227 of the Constitution of India, thereafter the Gujarat Revenue Tribunal has no authority to review the matter. Referring to the decision of this Court reported in 1996(1) GLR 689 relied upon by the respondent No.1, it is submitted that the said decision does not deal with the

aspect that review is not an inherent power and has to be specifically provided by the statute. It is submitted by him that the said judgment only holds that if a judge who has decided the matter has died or retired, subsequent Judge can entertain a review application. He has also further submitted that the judgment of this Court reported in 1995(1) GLR 831 also will not help the respondents as the said judgment also does not hold that the Tribunal has power to review its own judgment. Meeting with the contention on behalf of respondent No.1 that the Tribunal was bound to give effect to the judgment of the Hon'ble Supreme Court in the case of Meera Gupta (supra) and has given the effect to the said judgment, it is submitted that change of law subsequently cannot be a ground of review. Even, otherwise the decision in the case of Meera Gupta (supra) was delivered by the Hon'ble Supreme Court in the year 1992, whereas the review application was preferred in the year 1998 i.e. after a period of more than six years and there is no explanation as to why the delay has occurred. It is submitted by him that any judgment cannot be given effect

retrospectively by reopening closed and decided cases which have become final between the parties. It is submitted by him that in the present case, the dispute between the competent authority and respondent No.1 have been decided against the respondent No.1 by this Court way back in the year 1988 and on dismissal of the LPA in the year 1991, the issue was closed. It is submitted by him that any judgment which would be delivered by the Hon'ble Supreme Court i some other cases subsequently cannot be given effect retrospectively otherwise the same would have far reaching effect of opening closed cases. With regard to challenging the possession, it is submitted by Shri Desai that except written submission, no such contention has been taken by the respondent No.1 either before this Court or before the Tribunal by way of review application and therefore, the same is not permissible. It is submitted by him that even, otherwise the Tribunal in its impugned order has recorded that possession is taken by the authority on 28-9-1988 and the respondent No.1 is not challenging the said finding of the Tribunal and on

the contrary, has accepted the said finding of the Tribunal. He has submitted that even on merits, the said contention deserves to be rejected in as much as notification under Section 10(3) and 10(5) clearly provides the location of the land in question, which was declared as excess vacant land.

21.Meeting with the contention on behalf of the respondent No.1 regarding passing of the order under Section 26 of the Act, it is submitted by Shri Desai, learned AGP, that there are serious doubts regarding genuineness of the said order under Section 26 of the Act. It is submitted by him that no such application is traceable in the Office of the competent authority, which is alleged to have been submitted by the respondent No.1. It is submitted by him that the entire file of application under Section 26 of the Act is missing and the same is not traceable. He has also further submitted that the register bearing details of the applications received under Section 26 bears the details of so-called application submitted by the respondent No.1 at Serial No.41, however, two

separate names and two separate applications submitted by different persons for different lands, are registered at Serial No.41 and one of them is that of respondent No.1. It is also further submitted that the handwriting whereby details of the alleged application submitted by the respondent No.1 is written, is different from handwriting whereby the other details are stated and therefore, it can be safely presumed that the details of the alleged application of the respondent No.1 are written subsequently and the same is not genuine. It is also further submitted by him that the so-called order dated 15th March, 1999 creates more doubt when the alleged permission under Section 26 of the Act is not forwarded or received by the Office of the Sub-Registrar even as per the order produced by the respondent No.1, a copy of the same was forwarded to the Sub-Registrar. Even the Outward Register for the relevant period, which records the communication/order sent by the competent authority by post is missing and the Peon-Book, which registers the communication/order by hand delivery is also missing. From the above

circumstances, it is submitted by him that there is enough suspicion and doubt regarding genuineness of the said order under Section 26 of the Act. It is also further submitted by him that even the respondent No.1 in his earlier affidavit-in-reply affirmed on 18th December, 2000 has also not disclosed the same fact that any such permission was granted by the competent authority under Section 26 of the Act and therefore, according to Shri Desai, learned AGP, the said order seems to be a afterthought and it seems that it is a created and concocted document and therefore, it is requested not to rely upon the said order under Section 26 of the Act.

22.Now, so far as contention on behalf of the respondents that now the construction has already taken place and the respondent No.2 has spent huge amount for developing the land in question is concerned, it is submitted by Shri Desai, learned AGP, that as per the case of the respondent No.2 itself and the statement made by the learned counsel appearing on behalf of the respondent No.2

on 28.10.2005, the construction is on the retainable land. Even otherwise, this Court admitted the petition and granted the Stay on 25th November, 1999 and any construction undertaken thereafter would be contrary to the Stay granted by this Court. It is also further submitted by Shri Desai, learned AGP, that even as per the respondent itself the development permission was granted on 18th August, 2001 and it is obvious that the construction must have taken only thereafter. It is, therefore, submitted that the construction carried out after the interim order passed by this Court is void and has no legal base.

23.Now, with regard to the contention on behalf of the respondents that the State Government had accepted the order passed by the tribunal and had decided not to challenge the impugned order of the tribunal, it is submitted by Shri Desai, learned AGP, that the same is absolutely incorrect. It is submitted that after the letter dated 19th April, 1999 referred to in the reply, vide communication dated 30th June, 1999, the State Government sought

information from the competent authority regarding the present case and in response to the same, the competent authority vide its letter dated 3rd July, 1999 submitted the instructions to the State Government and thereafter, vide instructions dated 6th July, 1999 and 8th July, 1999, the Government Pleader of the High Court of Gujarat was instructed to file Special Civil Application challenging the various orders passed by the tribunal including the present order and therefore, according to Shri Desai, learned AGP, it is not correct to say that the State Government has accepted the order passed by the tribunal. Therefore, it is requested to allow the present Special Civil Application and to quash and set aside the impugned order passed by the tribunal.

24.Heard the learned advocates appearing on behalf of the respective parties at length.

25.It is not in dispute that the competent authority and Dy. Collector, ULC, processed the declaration – form under Section 6(1) of the ULC Act and declared

746.14 sq mts of land as excess vacant land under the provisions of the ULC Act. It is also not in dispute that the said order passed by the competent authority came to be confirmed by the Urban Land Tribunal vide order dated 14th May, 1987 an the order passed by the tribunal came to be confirmed by this Court i.e. by the learned Single Judge of this Court vide order dated 19th November, 1987 passed in Special Civil Application No.5238 of 1987 by which the learned Single Judge of this Court dismissed the said Special Civil Application and confirmed the order passed by both the authorities below. It is also not in dispute that the Letters Patent Appeal being Letters Patent Appeal No.511 of 1988 also came to be dismissed by the Division Bench of this Court by its order dated 7th January, 1991. It is also not in dispute that the said order has not been challenged by the respondent No.1 herein – original declarant any further and the said orders became final. In light of the above undisputed facts, the question, which is required to be considered by this Court is that *whether the tribunal could have any jurisdiction to review its*

order which has been confirmed by the Higher Forum ? The further question is also required to be considered by this Court is that *whether in the facts and circumstances of the case and considering the provisions of the ULC Act, whether the tribunal was justified in allowing the review application deciding the same on merits of the case in absence of any specific powers of review except the powers of review as contemplated under Section 45 of the Act by the competent authority that too to correct only clerical and arithmetical error ?* Further question, which is also posed for consideration is that *whether assuming that such a power of review is there with the tribunal, whether the tribunal was justified in exercising the review jurisdiction after unreasonable period and without condoning any delay ?* Another question, which is posed for the consideration of this Court is that *whether the subsequent decision of the Hon'ble Supreme Court would be a good ground to review the order, which has attained the finality between the parties ?* Now, before proceeding further, few decisions of the Hon'ble Supreme Court pertaining to powers to

review, which are touching the aforesaid questions are required to be considered.

> (i) In case of ***Patel Narsinh Thakarsinh (Supra)***, the Hon'ble Supreme Court has held that the power to review is not an inherent powers. It must be conferred by law either specifically or by necessary implication.
>
> (ii) In case of ***Lily Thomas, etc., (Supra)***, the Hon'ble Supreme Court observed that the dictionary meaning of the word "*review*" is "*the act of looking over something again with a view to correction or improvement.*"

It cannot be denied that the review is a creation of the statute. The power of review can be exercised for correction of mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of powers. The review cannot be considered as an appeal in disguise. In the aforesaid decision the Hon'ble Supreme Court further observed and held that mistake apparent on the face of record cannot

mean error, which has to be fished out and searched.

(iii) In case of ***Prabhkar Bhikhaji Injle (Supra)***, where the tribunal exercised the powers of review after dismissal of SLP by the Hon'ble Supreme Court, the Hon'ble Supreme Court even in a case where the order of dismissal of SLP was without speaking order, has held as under:-

"Para No.4 :- *But in this case, when the self-same main order was confirmed by this Court, the question arises whether the Tribunal has had power under Order 47, Rule 1 CPC or any other appropriate provision under the Tribunals Act to review the orders passed by it and confirmed by this Court by refusing to grant leave. We find that the exercise of the review power is deleterious to the judicial discipline. Once this Court has confirmed the order passed by the Tribunal, that becomes final. Therefore, the Tribunal cannot have any power to review the previous order which stands merged with the order passed by this Court."*

(iv) In ***Shri Narayan Dharmasangam Trust (Supra)***, in a case where the High Court refused to review its earlier revisional order after dismissal in lemini of the SLP against it by the Hon'ble Supreme Court, the Hon'ble Supreme Court has held that once this Court has passed an order, the order passed by the High Court stands merged with the order passed by this Court and thereafter, the High Court – Tribunal is devoid of the jurisdiction to review the order.

(v) In ***Gopabandhu Biswal (Supra),*** even in a case, where the review was sought by third party, who was not a party to the earlier proceedings, however, was aggrieved and filed a review application before the tribunal, however, the said order came to be confirmed upto the Hon'ble Supreme Court by way of SLP and the Hon'ble Supreme Court has held as under :-

"Para – 10 :- *In the present case, however, it is urged that the four applicants who filed the two review petitions before the Tribunal were not parties to the main petition. They were also not parties to the special leave*

petition filed before this Court which was dismissed. However, they are parties aggrieved and hence are entitled to apply for a review of the main judgment of the tribunal. It is contended by them that the judgment of the tribunal holding that the two cadres of Deputy Superintendent of Police and Assistant Commandant were a single cadre till 5-11-1980, has affected the chances of promotion of the applicants and, therefore, the applicants, being persons aggrieved, are entitled to maintain such review petitions when they had not been parties to the earlier judgment as well as the earlier special leave petition. We will assume for the time being that the applicants are persons aggrieved. Even so, the question is whether they can have a judgment which has attained finality by virtue of an order of this Court, set aside in review. There is no doubt that as between the parties to the main judgment, the judgment is final and binding. The respondents, State of Orissa and Union of India, are, therefore, bound to give effect to the judgment of the tribunal in TA No.1 of 1989 in the case of Gopabandhu Biswal. If this is so, can a third party by filing a review petition get that same

judgment reviewed and obtain an order that Gopabandhu Biswal is not entitled to the benefits of the directions contained in the main judgment sicne that judgment is now set aside? In our view this is wholly impermissible. It will lead to reopening a matter which has attained finality by virtue of an order of this Court. The applicants, even if they are persons aggrieved, do not have, in the present case, a right of review under any part of Order 47 Rule 1. Even under Order 47 Rule 1(2), the party not appealing from a decree or order can apply for review only on grounds other than the grounds of appeal which were before the appellate court, and during the pendency of the appeal. In the present case all the grounds which were urged in review were, in fact, urged before the Tribunal at the time when the Tribunal decided the main application and they were also urged by the petitioner in the special leave petition which was filed before this Court. The special leave petition has been dismissed. The same grounds cannot be again urged by way of a review petition by another party who was not a party in the main petition."

(vi) In ***Sow Chandra Kante And Another (Supra)***, the Hon'ble Supreme Court has observed that a review of a judgment is a serious step and reluctant resort to it proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistake of inconsequential import are obviously insufficient.

(vii) In ***Meera Bhanja (Smt) (Supra)*** while considering the scope of review power, the Hon'ble Supreme Court has observed that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. The review petition has to be entertained only on the ground of error apparent on the face of the record and not on any other ground. The Hon'ble Supreme Court further observed that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may

conceivably be two opinion.

(viii) In ***M/s. Northern India Caterers (India) Ltd (Supra)***, the Hon'ble Apex Court observed that a party is not entitled to seek a review of the judgment delivered by the Court mere for the purpose of rehearing and for a fresh decision of the case. It is further observed by the Hon'ble Supreme Court that whatever the nature of the proceedings, it is beyond dispute that a review proceedings cannot be equated with the original hearing of the case and the finality of the judgment delivered by the Court will not be reconsider except where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.

(ix) In ***Amratlal Muljibhai Thakkar And Another V/s. Ambalal Ranchhodlal Thakkar*** reported in **13 GLR P.756**, in a case where the Gujarat Revenue Tribunal exercised the review powers after rejection of the petition under Article 227 of the Constitution of India confirming the order which was reviewed, the learned Single Judge of this Court has held as under :-

"Para 5 :- *The question now arises as to whether the jurisdiction exercised by the High Court under Art. 227 stands on the same footing as appellate or revisional jurisdiction so far the doctrine of merger is concerned. The historical background of Art. 227 has been set out by the Supreme Court in Waryam Singh v. Amarnath, AIR 1954 SC 215. There it was pointed out that the power which the High Court exercises under Art. 227 of the Constitution is a power of judicial superintendence over the subordinate Courts and Tribunals situated within the State. Such a power of judicial superintendence was for the first time conferred upon the High Court by the High Courts Act, 1861. Subsequently the power was conferred by Sec.107 of the Government of India Act, 1915 and by Sec. 224 of the Government of India Act, 1936. The Supreme Court in Waryam's case (supra) held that the power under Art. 227 was a power of judicial superintendence available not only against the decisions of subordinate courts but also against decisions of all Tribunals functioning within the State over which the High Court exercised jurisdiction. I am not*

concerned in the present case as to when or under what circumstances the power conferred upon the High Court under Art. 227 will be exercised."

***"Para 6 :-** In my opinion, the correct description of the functions of the High Court under Art. 227 is to be found in the judgment of Bhagwati J. (as he then was) in Gopichand v. Western Railway, VII, G.L.R. 291. In para 3 of the judgment at page 295 of the report, it was pointed out :-*

> ***"By entertaining a petition under Article 227 of the Constitution the High Court does not seek to exercise jurisdiction to issue any high prerogative writ; the jurisdiction which the High Court exercises under Article 227 is of superintendence, a jurisdiction which the High Courts have under diverse status and just as in application for revision it is not necessary to make the court whose order is sought to be revised a party to the application, so also in a petition invoking the***

jurisdiction of the High Court under Article 227 of the Tribunal whose order is sought to be challenged is not a necessary party."

Thus, though according to the Supreme Court, the jurisdiction which the High Court exercises under Art. 227 is neither appellate nor revisional, it is some what analogous to the revisional jurisdiction which the High Court generally exercises under different status, say for example under Sec. 115 CPC or under Section 29 of the Bombay Rent Control Act or under Section 25 of the Provincial Small Causes Court Act.

***"Para 7 :-** In Shankar Ramchandra v. Krishnaji Dattatraya, A.I.R. 1970 S.C.1, the Supreme Court held that the revisional jurisdiction is part of the appellate jurisdiction of the High Court and the doctrine of merger applies to orders passed in revision just as it applies to orders passed by the High Court in appeal. At page 4 of the report, Grover J. delivering the judgment of the Supreme Court pointed out :-*

> ***"The true nature of the right of appeal is a right of entering a superior court and invoking its aid and interposition to redress the error of the court below. Two things which were required to constitute appellate jurisdiction were the existence of the relation of superior and inferior court and the power on the part of the former to review decision of the latter."***

It is the existence of this power which is material, not the extent or the scope of the power; nor the restrictions which may be imposed by statute or restrictions which may be self-imposed as a result of series of judicial decisions that counts. What counts, is the existence of the power to review the decisions of the subordinate Courts or the Tribunals. It is clear that when the High Court exercises power under Art. 227, it does so as a superior Court and as a superior Court it takes into review the decisions of either subordinate Courts or Tribunals functioning within the territory of the State and, to my mind, the power of judicial superintendence

under Art. 227 stands on a feoting not in any way different from that of appellate power or power in revision.

Para 8 :- *It is a matter of judicial discipline that the doctrine of merger is recognised viz., that when a superior Court has passed any order, the order of the inferior Court or the subordinate Court gets merged in the order of the superior Court and the order of the inferior Court thereafter no longer exists.*

Para 9 :- *The scope of the doctrine of merger was pointed out by Gajendragadhar J. (as he then was) while delivering the judgment of the Supreme Court in Income-tax Commissioner v. M/s. Amritlal Bhogilal & Co., A.I.R. 1958 S.C. 868. In para 10 at page 871 of the report, he pointed out :-*

> ***"There can be no doubt that, if any appeal is provided against an order passed by a tribunal, the decision of the appellate authority is the operative decision in law. If the appellate authority modifies or reverses the***

decision of the tribunal it is obvious that it is the appellate decision that is effective and be endorced. In law the position would be just the same even if the appellate decision merely confirms the decision of the tribunal. As a result of the confirmation or affirmance of the decision of the tribunal by the appellate authority the original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement."

Para 9 :- *In the instant case, after the Special Civil Application No. 1014 of 1968 was summarily dismissed by Sarela J. on August 13, 1968, it was that order of Sarela J. which subsisted and the order of the Revenue Tribunal was no longer in existence. As the Supreme Court has pointed out in Ratilal Nazir's case (supra), it does not matter whether the order of the superior Court is passed summarily or after hearing both the parties.*

What counts is the fact that the superior Court has applied its mind and passed an order in the matter. After that order is passed, whether the order be affirmance or of revision, it is the order of the superior Court which subsists. In the instance case, after the decision of Sarela J. of the Revenue Tribunal no longer existed and that being so, the sue motu review was clearly incompetent.

(x) In the case of ***Gujarat Housing Board, Vadodara V/s. Kalpeshkumar Naranbhai Patel & Ors.,*** reported in **2002(3) Vol.43 P.1940**, the learned Single Judge of this Court set aside the order passed by the Urban Land Tribunal who entertained appeal under Section 33 of the Act on merits after a lapse of 16 years without recording any reason as to there being sufficient cause to condone the delay.

(xi) While dealing with Section 152 of the CPC, which is analogous to Section 45 of the Urban Land Ceiling Act, which gives power to the Court and/or the authority for correction of clerical or arithmetical mistake, the

Supreme Court in case of ***State of Punjab V/s. Darshan Singh*** reported in **(2004) 1 SCC P.328** in paras 12 and 13, has observed as under:-

> ***"Para 12 :-*** *Section 152 provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very Court or the Tribunal cannot, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided*

specifically therefor and subject to the conditions or limitations provided therein. The powers under Section 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the Court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party if at all is to file appeal or revision before the higher forum or review application before the very forum, subject to the

limitations in respect of such review. It implies that the Section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the Courts below have been liberally construing and applying the provisions of Sections 151 and 152 of Code even after passing of effective orders in the lis pending before them. No Court can, under the cover of the aforesaid sections, modify, alter or add to the terms of its original judgment, decree or order. Similar view was expressed by this Court in Dwaraka Das v. State of Madhya Pradesh and another (1999 (3) SCC 500) and Jayalakshmi Coelho v. Oswald Joseph Coelho.

Para 13 :- *The basis of the provision under S. 152 of the Code is founded on the maxim "actus curiae neminem gravabit" i.e. an act of Court shall prejudice no man. The maxim "is founded upon justice and good*

sense, and affords a safe and certain guide for the administration of the law," said Cresswell, J. in Freeman v. Tranah (12 CB 406). An unintentional mistake of the Court which may prejudice the cause of any party must and alone could be rectified. In Master Construction Co. (P) Ltd. v. State of Orissa (AIR 1966 SC 1047) it was observed that the arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the Court liable to be corrected. To illustrate this point it was said that in a case where the order contains something which is not mentioned in the decree, it would be a case of unintentional omission or mistake as the mistake or omission is attributable to the Court which may say something or omit to say something which it

did not intend to say or omit. No new arguments or re-arguments on merits can be entertained to facilitate such rectification of mistakes. The provision cannot be invoked to modify, alter or add to the terms of the original order or decree so as to, in effect, pass an effective judicial order after the judgment in the case."

26. Now, so far as the judgments relied upon by the learned counsel appearing on behalf of the respondent No.1 are concerned, the learned counsel has relied upon the decision of this Court in case of ***Geetaben Janakbhai (Supra)*** and has submitted relying upon paras 6 and 8 of the said judgment that the Urban Land Tribunal had jurisdiction to decide the review application. It is required to be noted that in the said judgment, the issue under consideration by the Division Bench was that *whether on change of the concerned Officer, the power of review still could be exercised by the successor* and this Court in the said judgment has not considered

the scope of review by the tribunal.

27. On behalf of the respondent No.1 the decision of the Hon'ble Supreme Court in case of ***BCCI India (Supra)*** has been relied upon in support of their submission that the subsequent, if any change in law is made, than, it will be a ground for review. On going through the said judgment there is no such preposition of law laid down by the Hon'ble Supreme Court. What is observed by the Hon'ble Supreme Court in the said judgment is that the review application is maintainable on account of misconception of law or fact by the Court or an advocate and the question before the Hon'ble Supreme Court was that *whether while exercising its review jurisdiction, the Court can take into consideration a subsequent event or not.* A subsequent event cannot be equated with any change of law subsequently.

28. In case of ***Jayantibhai Vadivala (supra)***, the learned Single Judge of this Court was

considering *whether while hearing an appeal under Section 33 of the Act, the procedure as laid down in Order 41 Rule 27 of CPC for admitting additional evidence at an appellate stage, is to be applied or not.*

As held by the Hon'ble Supreme Court in case of **Haryana Financial Corporation And Another V/s. Jagdamba Oil Mills And Another** *reported in* ***(2002) 3 SCC P.496,*** *the judgment is to be read in the facts and the controversy of that case and the judgment is to be read as a whole and a party cannot choose one or two lines from the judgment.*

29. Now, so far as two decisions of the Hon'ble Supreme Court relied upon by the learned advocate appearing on behalf of the respondent No.1 in support of his submission that the declaration of law made by the Hon'ble Supreme Court is binding on all the authorities is concerned, considering the case of ***Food Corporation of India (supra)*** and the case of

Sarvankumar & Another (supra), there is no dispute with the preposition law laid down by the Hon'ble Supreme Court that declaration of law made by the Hon'ble Supreme Court is binding on all the authorities. The question is what will be the effect when the proceedings have attained the finality and the orders passed by the tribunal came to be confirmed by the Division Bench of this Court and subsequently after few years there is some decision of the Hon'ble Supreme Court in case of some another party. In the case of Food Corporation of India (supra), the dispute before the High Court was for the period between 17th May, 1975 to 6th January, 1997 and the law declared by the High Court was that the State of Haryana did not have the constitutional authority to impose sales tax on levy transactions and the said declaration of law was not challenged by the State, however, subsequently the Hon'ble Supreme Court upheld the constitutional validity of the levy on 6th January, 1997. That thereafter pursuant to the Hon'ble Supreme Court's decision, the State

issued another demand notice for the assessment years 1975-76, 1982-83, 1983-84 and 1984-85 dated 28th February, 1997 and the assessee paid the amount so demanded, however, thereafter the State issued a further notice to the assessee purportedly under Section 59 of the Haryana General Sales Tax Act; 1976 requiring the appellant to pay interest on the belated payment of the principal tax due for assessment year 1975-76. The High Court upheld the said levy and on appeal before the Hon'ble Supreme Court, the Hon'ble Supreme Court held that until 6th January, 1997, the State of Haryana could not have made demand for the payment of sales tax on levy transaction. The Hon'ble Supreme Court further observed that there is no doubt that by the judgment of the Hon'ble Supreme Court, the right of the State of Haryana to collect sales tax would relate back to 1975 but that is not the same as saying that during the said period when the law was adversed to the State of Haryana, it could still have made a legitimate demand. It is not appreciable how the said

judgment would help to the respondent No.1 in the facts and circumstances of the present case. In case of Sarvankumar & Another (supra), the dispute before the Hon'ble Supreme Court was with regard to lack of inherent jurisdiction to entertain the suit and therefore also the said decision will not be of any assistance to the respondent No.1 in the present facts and circumstances of the case.

30. Thus, considering the aforesaid facts and circumstances and the decisions of the Hon'ble Supreme Court in case of ***Patel Narsinh Thakarsinh (supra), Lily Thomas, etc. (supra), Prabhakar Bhikhaj Injle (supra, Shri Narayana Dharamsanghom Trust (supra), Gopalbondhu Bisvan (supra), Sow Chandra Kante & Another (supra), Meera Bhanja (smt)(supra) and M/s. Northern India Caterers (India) Ltd (supra)*** and the judgment of the learned Single Judge of this Court in case of ***Amratlal Mavjibhai Thakkar and Another (supra)*** and other decisions of this Court referred to hereinabove, the tribunal

committed an error in entertaining the review application that too after a period of 8 years and without there being any application for condonation of delay. On the ground of judicial discipline and the propriety and on the ground of merger, once the decision of the tribunal was confirmed by this Court upto the Division Bench, it was not open for the tribunal to entertain the review application to review the order which came to be confirmed by this Court and on dismissal of the Special Civil Application by this Court, the order passed by the tribunal merged into the order passed by this Court and therefore, technically speaking the order passed by the tribunal, which came to be reviewed was not in existance inasmuch as the same merged into the order passed by this Court. It is also required to be noted that in the application for review submitted by the respondent No.1 in 1999, there is no reference to the filing of the Special Civil Application against the order sought to be reviewed and dismissal of the Special Civil Application and Letters Patent

Appeal. However, it is the contention on behalf of the respondent No.1 that in the records and proceedings, the orders were there. It is still worse. If the orders were already there in the record and still the tribunal exercised the jurisdiction and entertained the review application, than as stated above, the tribunal could not have done so. If the tribunal was not aware of the fact than it is to be presumed that the tribunal decided the review application without going through the record of the case. It also appears from the record prima-facie that either the Officers of the Urban Land Ceiling Authority joined hands with the respondent No.1 and/or the tribunal deliberately passed the order entertaining the review application with a view to favour the respondent No.1 and taking the disadvantage of the situation that the Urban Land Ceiling Act was to be repealed w.e.f. 31st March, 1999 and it prima-facie appears that taking the disadvantage of the same, the respondent No.1 preferred review application after a period of 11 years of the order passed

by the tribunal and after 8 years of dismissal of Special Civil Application No. 5238 of 1987 and after 6 years of the judgment of the Hon'ble Supreme Court in case of Meera Gupta (supra).

31. It is required to be noted that as such there are no specific powers of review conferred upon the tribunal. The only provision in the Urban Land Ceiling Act is Section 45, which reads as under :-

> ***Section – 45 :- Correction of clerical errors.***
> ***"Clerical or arithmetical mistakes in any order passed by any officer or authority under this Act or errors arising therein from any accidental slip or omission may at any time be corrected by such officer or authority either on his or its own motion or on an application received in this behalf from any of the parties."***

The aforesaid Section 45 is almost in the same words as Section 152 of the Code of Civil Procedure, which empowers only clerical or arithmetical mistakes in any order passed by the

Officer or authority under the ULC Act or error arising therein from any accidental slip or omission can be corrected by such Officer or authority. Thus, the aforesaid power is distinguished from the powers of review. Thus, the Act does not confer any power of review on any authority acting under the Act on any ground. Even the limited powers of review conferred on a Civil Court under Order 47 Rule 1 of the Code of Civil Procedure are not given to the authorities. As stated above, no authority exercising judicial or quasi judicial powers has an inherent powers of review. Thus, considering the above decisions of the Hon'ble Supreme Court, the exercise of powers by the tribunal entertaining the review application and allowing the same is without jurisdiction and is a nullity. It was not a clerical or arithmetical mistake corrected by the tribunal. On this ground also, the order passed by the tribunal requires to be quashed and set aside.

32. Now so far as the contention on behalf of the respondent No.1 with regard to maintainability

of the petition at the instance of the State Government and the contention on behalf of the respondent No.1 that the State Government has no right to file the present Special Civil Application against the order passed by the Urban Land Tribunal on the ground that the appellate authority under Section 33 of the Act is ex-officio Secretary to the Government of Gujarat, Revenue Department, and the Secretary, Revenue Department is a part of the Government and therefore, the order passed by the Secretary of the Government is an order of the State Government and the State Government cannot make any grievance against their own order is concerned, though the said submission/argument seems to be attractive but has no substance at all and the same is required to be rejected outright. Merely because the appellate authority is to be headed and/or constituted by the Secretary and/or is ex-officio Secretary to the Government of Gujarat, the appellate authority would not become the State Government. If the contention on behalf of the respondent No.1 is accepted, then in no case, the State Government can challenge the order

of the tribunal even though the order is absolutely arbitrary, perverse and illegal and even without jurisdiction and the State Government would be left high and dry without any remedy available to it and such cannot be the intention of the legislature to leave any party without any remedy. Even otherwise, as stated above, the impugned order passed by the tribunal is without jurisdiction and is a nullity.

33. So far as reliance placed upon the alleged permission under Section 26 of the Act is concerned, it is required to be noted that firstly no such application is traceable in the Office of the competent authority which was alleged to have been submitted by the respondent No.1. The entire file of the application under Section 26 of the Act is missing. This Court has called for the Inward Register and on going through the Inward Register which bears details of the applications received under Section 26 of the Act, bears the details of so-called application submitted by the respondent No.1 at Serial No. 41, however, it is found that there are two different names and two different

applications submitted by different persons for different lands mentioned at Serial No.41 and one of them is that of respondent No.1. On verification of the handwriting, this Court has found that the handwriting whereby details of the alleged application submitted by the respondent No.1 is written is in different handwriting than the other details and thus, the so-called permission under Section 26 of the Act which is relied upon by the respondent No.1, the genuineness of the same is very much doubtful. Even the Outward Register for the relevant period which registers the communications/orders sent by the competent authority by post is also missing and the Peon Book which registers the communications/orders sent by the hand delivery is also missing. Even otherwise and assuming that such a permission under Section 26 of the Act is there, in that case also, the same will not be helpful to the petitioner. Any person holding vacant land within the ceiling limits if wants to transfer such land by way of sale, mortgage, gift or otherwise, can do so only after giving notice in writing of the intended transfer

to the competent authority. Thus, the permission under Section 26 of the Act is for the land hold by such person within the ceiling limit and on making such an application, an option is given to the State Government/Competent Authority to purchase the said land having first option and by granting such permission under Section 26 of the Act the competent authority informs the person/land owner that the State Government does not want to exercise that option and he is free to sell the land to the intended purchaser. The dispute in the present Special Civil Application is not with regard to the land held by the respondent No.1 within the ceiling limit but it is with regard to the excess vacant land. Under the circumstances, it is not appreciable how the alleged permission under Section 26 of the Act will help the respondent No.1. Even otherwise, as stated above, the respondent No.2 has already made a statement that the property purchased by the respondent No.2 is from the retainable land. Thus, so far as excess vacant land is concerned, neither the same has been purchased by the respondent No.2 nor any third

party rights are created. Under the circumstances, the contention on behalf of the respondent No.1 that third party rights are created has no substance and is also factually incorrect.

34. So far as the dispute raised by the respondent No.1 with regard to taking over possession of the excess vacant land by the State Government is concerned, it is required to be noted that no such contention is raised by the respondent in affidavit -in-reply and/or even before the lower authorities and only in the written submission such a contention is raised and therefore, it is not open for the respondent No.1 to challenge the same. Even otherwise, before the tribunal also no such contention was raised with regard to possession. Even the tribunal in the impugned order has recorded that the possession is taken by the authority on 29th Sptember, 1988. Nothing is on record that possession was returned after the impugned order passed by the tribunal on review application. The dispute raised by the respondent No.1 that the possession was not taken properly by

the authority is nothing but an afterthought. Initially the case of the respondent No.1 before this Court in the affidavit-in-reply was that the land in question is sold to respondent No.2 and the possession is handed over to the respondent No.2, however, when a statement was made on behalf of the respondent No.2 that they have purchased the retainable land, in the written statement for the first time the respondent No.1 has raised a dispute that the possession was not properly taken by the authority.

36. Thus, considering the aforesaid facts and circumstances, the exercise of powers by the tribunal in entertaining the review application and allowing the same that too after a period of 11 years and that too when this Court confirmed the order passed by the tribunal upto the Division Bench, is a nullity and without jurisdiction and as stated above, it was not open for the tribunal to entertain the application after this Court confirmed its own order. The entertainment of the review application by the tribunal is against the

judicial discipline which is not permitted at all.

35. Under the circumstances and for the reasons stated above, the petition succeeds and the impugned order passed by the tribunal dated 22nd January, 1999 passed in Review Application No. Jamnagar/31/98 is hereby quashed and set aside and the petition is allowed. Rule is made absolute with exemplary costs of Rs.25,000/- and the respondent No.1 is directed to deposit Rs.25,000/- by way of costs with the Registry of this Court within a period of two months from today. On deposit of the aforesaid amount, the Office is directed to transfer an amount of Rs.10,000/- to the Gujarat High Court Legal Aid Committee and an amount of Rs.15,000/- in favour of the State Government i.e. Secretary, Revenue Department, State of Gujarat. If the aforesaid amount is not deposited within the period of two months, Office is directed to place this matter before this Court for an appropriate order.

[M.R.SHAH, J.]

kdc